



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.08.2018

PRONOUNCED ON : 30.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.R.C.No.436 of 2011

Kalaiyaran

.. Petitioner / PW.1 Defacto
Complainant

-vs-

1. State Represented by,
Station House Officer,
Neeravy Police Station,
Puducherry State.
(Crime No.31 of 2005)

.. Respondent / Complainant

2.Omakutty

3.Manikam

4.Raman

5.Sasidharan

6.Ravikumar

.. Respondents/Accused Nos.1 to 5

PRAYER: Criminal Revision Case filed under Sections 397
r/w 401 Cr.P.C., praying to call for the records in C.C.No.255
of 2006 dated 15.04.2010 on the file of the learned Judicial
Magistrate No.II, Karaikal and set aside the same.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.D.Bharatha Chakravarthy
Public Prosecutor for R1
(Puducherry)



Mr.R.Vasudevan
for M/s.T.Susindran
for R2 to R6

ORDER

WEB COPY

The defacto complainant is the revision petitioner herein. The revision is filed by PW1 against the order of acquittal.

2. Heard the learned counsel for the respondent.

3.The case of the prosecution in brief is as follows:

In December 2004, Karukalacherry fishermen village, Karaikal is one of the Tsunami affected area. After Tsunami, both the Central and the Union Government of Puducherry as well as some of the NGOs have come forward to give assistance to the Tsunami affected village. At the time, the accused A1 to A5, who are the Panchayatars of the village have falsely represented some persons other than the villagers, as if they are also the residents of the village and the accused have collected money and misappropriated to the tune of Rs.21,500/- and when it was questioned by PW.1-Kalaiyarasan, PW.2-Viswanathan and PW.3-Muthukumar, who are belonged to Karukalacherry village, the accused, who were in the dominant position of Panchayatars, excommunicated them and thereby, they have been denied the Tsunami relief fund and hence the complaint.

4. From the evidence of PW.1 to PW.3, it is clear that the accused were joint together and excommunicated PW.1's family and the other family of the villagers, namely, Mayilvaghanan, Velayutham and Rishy Shankar, since they have also questioned the irregularities committed by the panchayatars. The revenue witnesses PW.7, PW.8 and PW.10, who deposed to the effect that based upon the identification made by the Panchayatar, they have distributed the Tsunami relief fund to 364 persons and obtained acknowledgement and Rs.10,000/- was disbursed for each family. P.W.10-the Senior Manager of Indian Bank at Karaikal Branch also deposed that the cheques have been issued to the beneficiaries. Thus, the charges against the accused are that,

(i) the accused cheated the Government by aiding to get the Tsunami relief, to persons, who does not belong to Karukalacherry village.

(ii) The accused misappropriated a sum of Rs.21,500/- out of the panchayat fund by making false entries in the panchayat register.

(iii) accused ex-communicated the witnesses PW1 and others from the village and criminally intimidated them.



5. On perusal of the oral evidence of PW.1 to PW.11 and Ex.P1 to Ex.P5, there is no iota of evidence produced by the prosecution to prove that the persons, who are the Karukalacherry villagers and who are not belonged to Karukalacherry village and to whom all these accused facilitated to get the Tsunami relief fund. The names of the persons, who are the beneficiaries of the Tsunami relief were not mentioned either in the complaint or in the charge sheet or any of the evidence examined by the prosecution. Admittedly, from the evidence of the revenue witnesses, it is seen that A1 to A5 were the panchayatars at the relevant point of time. PW.6 and PW.7 have stated that the amount sanctioned by the government towards Tsunami relief fund was disbursed by them directly to the beneficiaries on identification by the panchayatars and no amount has been given to the panchayatars as stated by PW.1 assumes significance. Further more, on close scrutiny of the revenue witnesses PW.6 and PW.7, they have not whispered anything about the amount disbursed to the persons, other than the village people, namely, Karukalacherry village. Further, they have not mentioned any name of such persons, to whom the benefit was given as stated by PW.1. Therefore, from the evidence of PW.6 and PW.7, the independent witnesses, nothing is there to disclose any material to support the case of the prosecution as to the mis-representation in identifying the beneficiaries. PW.8-Murugesan(Tahsildar) has not deposed regarding the relief granted to any person outside the village, in view of the alleged misrepresentation said to have been made by the accused. From the revenue witnesses, namely, officials of Fisheries Department or Tsunami relief fund Special Revenue Officer have not received any complaint as to the loss to the Government. Even PW.1 has not stated the name of the persons to whom Tsunami relief was wrongfully given or wrongfully identified by the accused. Thus, this Court finds that neither the evidence of PW.1 nor the revenue witnesses PW.6, PW.7 and PW.8 to disclose any offence under Section 420 IPC in support of the charge. In the absence of any details regarding to whom the Tsunami relief fund was wrongfully given as claimed by PW.1, the trial Court has taken into consideration that the evidence let in by the prosecution suffers from infirmity and does not discloses any offence under Section 420 IPC and accordingly ordered acquittal and the said finding of the trial Court does not suffer from any irregularity or illegality warranting interference at this revision stage.

6. The next charge relating to Section 406 IPC is that the accused have misappropriated a sum of Rs.21,500/-. However, on analysing the prosecution witnesses, none of the witnesses have whispered anything regarding entrustment of any amount from Tsunami relief fund or distribution with the accused. All the revenue witnesses and the officials of the Bank have categorically deposed that they have handed over the Tsunami



relief fund by way of cheque to the affected persons and hence in the absence of any positive evidence to show the entrustment of money with the accused, the trial Court has rightly come to the conclusion that the alleged offence under Section 406 IPC has not made out. Further allegation against the accused is that the accused have misappropriated Rs.21,500/- and not returned to the new office bearers of the elected panchayat. In this connection, none from the newly elected body have been examined by the prosecution to show that there was a deficit of a sum of Rs.21,500/- and the said amount was not remitted by these accused and accordingly, this Court is of the considered view that the prosecution has not let in sufficient evidence to establish entrustment and secondly, there is no sufficient evidence for misappropriation of fund and thus on this ground also, the finding of the trial Court does not warrant any interference.

7. The last leg of the charge which is under Section 506 (ii) IPC against the accused is that PW.1 and some other villagers were criminally intimidated by the accused since they questioned non-disbursing of Tsunami relief fund to them and further they were excommunicated by the accused. However, no order or any communication with regard to the alleged factum of excommunication from the village was produced before the Court. None of the prosecution witnesses have supported PW.1 and hence in the absence of the any particulars as to when such a criminal intimidation is alleged to have been made by the accused and the date on which the criminal intimidation is said to have been made is found to be at the material contradiction with the version of PW.1 and PW.3. Further more PW.1 has not whispered the time of alleged criminal intimidation and does not disclose the place, where the accused alleged to have criminally intimidated him either in the complaint or in the witness box and thus this Court finds that mere utterance of word will not attract the offence under Section 506(ii) IPC. The threat should be real one and not just mere a word and in view of the material contradiction with regard to the alleged date of occurrence and non-disclosure of the place of the occurrence, which caused very serious doubt as to the reality of the version of PW.1 with regard to the charge under Section 506(ii) IPC and hence a similar finding rendered by the trial Magistrate does not call for any interference and the prosecution is miserably failed to prove all the charges as against the order of acquittal passed by the trial Court. Hence, the order of the trial Court is well considered and does not warrant any interference.



8. In the result, this Criminal Revision Case is dismissed. The order impugned in this petition is confirmed.

WEB COPY

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

PJL

To

1. The Judicial Magistrate No.II,
Karaikal.

2. The Station House Officer,
Neeravy Police Station,
Puducherry State.

Copy to
The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.T.Susindran, Advocate, S.R.No.82072

+1cc to the Public Prosecutor, S.R.No.83245

CRL.R.C.No.436 of 2011

SV(CO)
GSP(25/01/2019)